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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Iraq

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the attached interim report prepared by Mr. Max van der Stoel, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq, in accordance with paragraph 14 of Commission on Human Rights resolution 1994/74 of 9 March 1994 and Economic and Social Council decision 1994/278 of 25 July 1994.

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I. INTRODUCTION

1. In accordance with paragraph 14 of Commission on Human Rights resolution 1994/74 of 9 March 1994, as approved by Economic and Social Council decision 1994/278 of 25 July 1994, the present report constitutes the interim report of the Special Rapporteur on the situation of human rights in Iraq. A final report will be submitted to the Commission on Human Rights at its fifty-first session.

2. In carrying out his mandate, the Special Rapporteur has again examined a wide range of information pertaining to general and specific allegations submitted through testimony and in documentary form, including script and audio- and video-recordings. In analysing this information, supplemental information has been sought from various sources, including scientific institutes. However, direct access to locations within Iraq has not been possible owing to the Government of Iraq's refusal so far to cooperate with the United Nations in receiving a return visit of the Special Rapporteur to Iraq and, more importantly, the stationing of human rights monitors throughout Iraq pursuant to resolutions of the General Assembly and the Commission on Human Rights.

3. In implementation of paragraph 11 of Commission on Human Rights resolution 1994/74 regarding the sending of human rights monitors "to such locations as would facilitate improved information flows and assessment and would help in the independent verification of reports on the situation of human rights in Iraq" and notwithstanding the Government of Iraq's refusal to cooperate with the placement of human rights monitors inside Iraq, the Special Rapporteur requested in the last few months the sending of staff members of the Centre for Human Rights of the United Nations Secretariat to the United Kingdom of Great Britain and Northern Ireland, Kuwait and the Islamic Republic of Iran. These locations were chosen because of the possibility of obtaining relevant information from persons there who claim to be victims of, or eyewitnesses to, human rights violations committed by the Government of Iraq.

4. The first mission referred to above took place from 3 to 6 May 1994, when a staff member from the Centre for Human Rights travelled to London in order to receive information of a recent nature relating to a variety of matters of concern to the Special Rapporteur. During the visit to London, the staff member met with a wide range of persons and received testimony, together with supplementary information in documentary, photographic and video form.

5. The second mission referred to above took place from 24 June to 2 July 1994 when two staff members from the Centre for Human Rights travelled to Kuwait in order to receive information concerning the fate of Kuwaitis and other persons who disappeared during Iraq's occupation of Kuwait. The fate of this particular group of persons forms part of the mandate of the Special Rapporteur as a result of paragraphs 4 of Commission resolutions 1992/71 and 1993/74 and paragraph 5 of Commission resolution 1994/74. This aspect of the mandate of the Special Rapporteur follows upon the work done by the Special Rapporteur on Iraqi-occupied Kuwait prior to the completion of that mandate. However, since the Special Rapporteur lacked, until the summer of 1994, sufficient resources to study the unique and specific matter of missing Kuwaitis, only very brief reporting has been offered by the Special Rapporteur in his previous two reports

to the Commission (see E/CN.4/1993/45, para. 49, and E/CN.4/1994/58, para. 32). Consequently, the present report contains, in section II, the results of the Special Rapporteur's investigations, considerations and conclusions based upon information received prior to and during the aforementioned mission to Kuwait by human rights monitors.

6. Faced with reports of a continuing flow of refugees, principally Marsh Arabs, arriving in the south-western part of the Islamic Republic of Iran from the southern marsh area of Iraq, the Special Rapporteur sent a third mission of two Centre for Human Rights staff members in August 1994. Serving in the capacity of human rights monitors pursuant to paragraph 11 of Commission resolution 1994/74, the staff members travelled to the Islamic Republic of Iran from 15 to 25 August 1994. Four days of the mission were spent in Khuzestan Province towards the marsh frontier with south-eastern Iraq, while the remainder of the visit was spent in Tehran. Both testimonial and documentary evidence (including photographs and video-recordings) were received. Section III of the present report contains the results of the Special Rapporteur's investigations, considerations and conclusions concerning the situation of the Marsh Arabs of Iraq based upon information received prior to and during the aforementioned mission to the Islamic Republic of Iran.

7. In June 1994, reports of extremely disturbing new decrees of the Revolution Command Council began reaching the Special Rapporteur which, by their mere existence, would constitute a legalization and institutionalization of cruel and unusual punishments and, by their implementation, would constitute, inter alia, forms of torture. Since these decrees also affect large parts of the population and are applicable throughout the jurisdiction of the Republic of Iraq, the Special Rapporteur has decided to address them in section IV of the present report.

8. Political killings attributed to agents of the Iraqi State have characterized the situation of human rights in Iraq for a very long time. Some recent cases are briefly described in section V of the present report before the Special Rapporteur offers his conclusions on the use of this technique of suppressing opposition groups, or mere oppositional sentiments, through terror.

9. Among the most visible and disturbing policies of the Government of Iraq, affecting virtually the entire population, are those which concern the rights to food and health. In section VI of the present report, the Special Rapporteur addresses the deteriorating situation regarding these most vital of economic rights and offers his conclusions as to the responsibilities of the Government of Iraq.

10. Aside from the matters addressed below, and especially keeping in mind the recent decrees addressed in section IV below, it is again to be observed that there are no signs of improvement in the general situation of human rights in Iraq. Indeed, it is the opinion of the Special Rapporteur that the situation of human rights in Iraq in all spheres, whether civil, cultural, economic, political or social, has deteriorated in the last year.

11. The present report reflects information at the disposal of the Special Rapporteur as of 23 October 1993.

II. THE SITUATION OF MISSING KUWAITIS

A. Introduction

12. In its resolution 46/135, adopted on 17 December 1991, the General Assembly addressed the problem of Kuwaiti and third-country nationals who had disappeared during the Iraqi occupation of Kuwait, and requested the Government of Iraq:

> "4. ... to provide information on all Kuwaiti persons and third-country nationals deported from Kuwait between 2 August 1990 and 26 February 1991 who may still be detained and ... to release these persons without delay;
>
> "5. ... to provide ... detailed information on persons arrested in Kuwait between 2 August 1990 and 26 February 1991 who may have died during or after that period while in detention, as well as on the site of their graves;
>
> "6. ... to search for the persons still missing and to cooperate with international humanitarian organizations, such as the International Committee of the Red Cross, in this regard;
>
> "7. ... to cooperate with and facilitate the work of international humanitarian organizations, notably the International Committee of the Red Cross, in their search for and eventual repatriation of Kuwaiti and third-country national detainees and missing persons".

13. At the previous session of the Commission on Human Rights, a specific investigation procedure had been established to examine the situation of human rights in Iraqi-occupied Kuwait, including the problem of disappearances. As noted in paragraph 5 above, two staff members from the Centre for Human Rights, acting as human rights monitors in the framework of Commission resolution 1994/74, undertook a visit to Kuwait from 24 June to 2 July 1994. During their stay in Kuwait, the monitors met with a wide variety of persons of special relevance to the continuing problem of Kuwaiti and third-country nationals who disappeared during or subsequent to their alleged arrest and detention by Iraqi forces occupying Kuwait between 2 August 1990 and 26 February 1991. Among those interviewed were representatives of the Kuwaiti National Committee for Missing and Prisoners-of-War Affairs and the Kuwaiti Association for the Defence of Victims of War. In total, the monitors interviewed more than 100 victims, witnesses and family members of the missing Kuwaitis, including persons who had remained in Kuwait during the occupation.

14. With respect to the basis of concern over persons who have disappeared, it is to be noted that an original list of persons who were missing after the withdrawal of the Iraqi occupying forces was established in March 1991. It contained more than 11,700 names (see E/CN.4/1992/26, para. 148). Following large-scale repatriations of prisoners-of-war (POWs) and civilian internees in late March and early April 1991 and the spontaneous reunion of families who had been separated during the time of the occupation, the number of missing persons decreased considerably. Further clarification of numerous other cases occurred

through the subsequent months so that the remaining number of missing Kuwaitis has fallen substantially.

15. In response to an inquiry by the Special Rapporteur, the Government of Kuwait submitted on 30 November 1993 a list of 625 individual files (concerning 609 missing persons, 16 of whom have known pseudonyms and, hence, 2 files) that had been compiled by the Kuwaiti Government's National Committee on the basis of specific guidelines of the International Committee of the Red Cross (ICRC) and with help from the Kuwaiti Association for the Defence of Victims of War. The files were compiled taking into consideration three different sorts of evidence: (a) accounts from family members, of whom several claim to have witnessed the arrest of their relatives; (b) testimonies of former detainees (including foreigners) who claim to have seen some of those who have disappeared inside prisons or detention centres; and (c) Iraqi documents relating to those missing, which were said to have been found after the withdrawal of the Iraqi forces.

16. The cases on the list of missing Kuwaitis concern persons from various social strata and of different ages; only a few are non-Kuwaitis. Among those listed are also persons of special status, such as the case of a Baathist and former Member of the Kuwaiti Parliament, Mr. Al-Sanea and his family. The Special Rapporteur has received information from several reliable sources that, in addition to Kuwaitis and other third-country nationals, a large number of "bidun" (stateless persons of long residence in Kuwait) are also reported to have disappeared during the Iraqi occupation of Kuwait. Taking into consideration these additional cases, it would seem clear that the total number of persons who apparently disappeared under Iraqi occupation remains much higher than 609.

17. During their mission to Kuwait, the monitors met several persons who knew of missing persons in their extended families or among their friends and neighbours. Thorough interviews were conducted with some of the relatives of the 609 missing persons. The majority of the cases checked are well-documented with testimonies of people who claim to have witnessed the arrest of the missing person and others who claim to have seen the missing person in detention either in Kuwait or in Iraq. A total number of 36 cases of persons who disappeared during the Iraqi occupation in Kuwait was formally checked during the mission. This number includes both men and women. The total also includes missing persons of different ages, from youths to a number of elderly persons. Although the great majority of files in the possession of the Special Rapporteur regarding missing persons concern Kuwaiti nationals, families of foreigners living in Kuwait and "bidun" who are also reported to have disappeared were also interviewed.

B. Substantive aspects

18. According to the testimonies received, procedures used by Iraqi authorities to arrest Kuwaiti citizens varied and arrests took place in all kinds of locations. While each case has unique elements, most cases involved one of the following: assaults on private homes; arrests by Iraqi patrols of Saudi-Kuwaiti border crossings; and arrests at Iraqi check-points inside occupied Kuwait.

19. Assaults on private homes usually took place with Iraqi soldiers (who were often recognized as Republican Guards) first surrounding the house. Members of either the Iraqi Military Intelligence or the Security Services would then carry out the arrest during a search of the house. Beatings during arrest were said to be commonplace. Generally, these raids were said to have been based on precise information with the Iraqi forces frequently reported to be looking for specific persons. Several of the persons arrested were known to belong to opposition groups. Some of them were released later, others escaped during the March 1991 uprisings in southern Iraq and others remain missing today.

20. In connection with the assaults on private homes, according to the information received, the houses were often guarded after the initial arrests and persons trying to enter the houses would then also be captured. In one case, several persons were known to be apprehended as a result of a trap in which a detainee was forced (reportedly under threat of execution) to telephone friends and invite them to the house concerned where they were subsequently arrested. Some of these persons remain missing.

21. With respect to arrests by Iraqi patrols of Saudi-Kuwaiti border crossings, many families were outside or quickly fled Kuwait when the invasion took place on 2 August 1990. As most of the border was then closed, except that with Iraq, people fleeing the occupation were forced to leave Kuwait illegally through the desert. However, once the Iraqi forces had been deployed along the Kuwaiti border, persons wishing to return to Kuwait are believed to have been arrested while crossing the Saudi-Kuwaiti frontier, and the fate of some is still unknown. Despite the fact that these cases are less well documented than others because there are no witnesses to their arrest, testimonies have been received from former POWs stating that they subsequently saw the victims inside prisons or detention centres in Iraq.

22. Regarding arrests at Iraqi check-points inside occupied Kuwait, Iraqi authorities deployed check-points on the main streets of Kuwait to prevent freedom of movement and to control real or potential resistance. Several persons were arrested during searches at these check-points, and some of them have since disappeared.

23. Many people, among whom were both Kuwaitis and non-Kuwaitis, were taken prisoner during the fighting that accompanied the invasion and its immediate aftermath. Those imprisoned included members of the armed forces as well as people working in the Kuwaiti administration. Military and administrative personnel captured during this early period were taken to Iraq and some of them were released after the liberation of Kuwait when ICRC visited detention centres in Iraq.

24. A second broad group of persons was arrested as the occupation continued. Some of this second group were members of military and police forces while others were civilians (e.g. students and public administrators), including foreigners allegedly involved in opposition activities.

25. A third group is said to have been arrested at the very end of the occupation. Most of these persons were reportedly Kuwaitis arrested from public places; however, none of the documented cases relate to this period. In the

majority of cases studied by the Special Rapporteur, the persons concerned were reportedly arrested between August and October 1990.

26. As for the alleged reasons for the arrests, it appears that in most cases the persons said to have been arrested were suspected of some form of opposition against the Iraqi occupation. Resistance to the Iraqi occupation was very largely interpreted by Iraqi forces without any distinction as to whether it was passive or active, violent or non-violent opposition. The following reasons for these arrests were reported: (a) possessing arms or ammunition; (b) forging driving licences, car registration books, ID cards; (c) publishing and distributing resistance newsletters or spraying anti-Iraqi graffiti on walls. In some cases, people were apparently arrested for belonging to humanitarian groups and solidarity associations. People distributing food and basic needs to citizens and doctors who treated resistance members were also said to be arrested. As mentioned above, another group was allegedly arrested while crossing the Saudi-Kuwaiti border, perhaps on charges of illegal exit or entry. Among the documented cases, there were only a few where there was no alleged reason for the arrest.

27. Information on the treatment of persons arrested comes from testimonies of former detainees who were released as a consequence of the March 1991 uprising in southern Iraq that followed the Iraqi withdrawal from Kuwait. Jails were attacked by Iraqi rebels (e.g. in Basrah) who opened the doors and liberated the opponents of the Iraqi Government. Others were released after the intervention of ICRC which, following the war, was allowed to visit some prisons, register POWs and civilian internees in Iraq and arrange for their repatriation.

28. The treatment of persons arrested and detained by the Iraqi authorities appears to have varied widely. In most cases, detained persons were first interrogated at temporary centres of detention usually located very near to the place of the arrest, such as police stations (e.g. Sabah Al-Salem, Jahra, Farwaniya, Salmiya, Firdous), school buildings, private houses (e.g. the well-known Beit Al-Bahr) and administrative buildings. Many of the detainees were later transferred to other centres of detention for further interrogations and longer detention. In some cases, soldiers were said to have been separated from the civilians. Interrogations are said to have focused on the activities either of the arrested persons or of their friends and relatives: detainees were instructed to collaborate with the Iraqi occupying forces and to provide information. Interrogations were almost always said to have been accompanied by beatings. Some detainees were then released, some reportedly because they paid large bribes. Those who were not released were normally taken to Iraq (especially just before the allied bombardment) where they were transferred to large prisons or camps in Basrah, Nasiriyah and Baghdad.

29. Interviewed persons consistently reported that those arrested did not have access to lawyers and were not allowed to contact their families. Families looking for arrested relatives were normally not informed about their whereabouts, except for a very few cases.

30. It appears that detainees in these centres were subject to ill-treatment and torture, including beatings and electrocutions. Living conditions in most of the Iraqi detention centres in Kuwait were very poor. There was very little

water available and food was insufficient. Most detainees were arrested in the summertime and were still in the same clothing when winter arrived; blankets were not supplied. In Iraq, especially Basrah prison, witnesses testified that life was especially difficult: each day, several prisoners were taken for questioning and allegedly tortured (beatings and electrocutions); the sounds of beatings and torture filtered through to the remaining occupants of the large (16 square metres), but crowded (40 persons), cells. Prisoners were said to have been allowed to visit the toilets only once a day, usually in the morning in groups of five with their hands tied, on their way to the toilets, they were very often beaten and subjected to humiliation. There was said to have been no ventilation and very little light, except from small windows, and bad food was distributed in small quantities; inmates had to sleep on the cold cement floor and only small blankets were supplied.

C. Conclusion

31. In the opinion of the Special Rapporteur, there can be no doubt that many persons disappeared during or subsequent to the Iraqi occupation of Kuwait. In so far as the disappearances occurred during the Iraqi occupation of Kuwait, there can also be no doubt of the general responsibility of Iraq for the fate of these persons and the effects on their families. Detailed testimonies and other corroborative evidence further establishes the specific responsibility of Iraqi forces and authorities in relation to many individual cases. From the point of view of the missing and their relatives, however, the question arises whether all these persons are still, as has been claimed, detained in Iraq.

32. In accordance with the applicable rules of international law, Iraq must account for those who were actually arrested by its forces. If Iraq is still holding POWs and civilian internees, a premise the Iraqi authorities deny, several basic human rights embodied in the International Covenant on Civil and Political Rights would be violated. In any case, Iraq has failed:

(a) To inform families about the whereabouts of persons arrested in Kuwait or to give arrested persons the right to contact their families;

(b) To provide information about death sentences imposed on POWs and civilian detainees, as required by articles 101 and 107 of the Third Geneva Convention, of 12 August 1949, and articles 74 and 75 of the Fourth Geneva Convention, of 12 August 1949;

(c) To issue death certificates for deceased POWs and civilian internees and to provide information about graves in accordance with articles 120 and 121 of the Third Geneva Convention and articles 129 to 131 of the Fourth Geneva Convention.

33. In addition to the violations of international humanitarian law referred to above, the Government of Iraq has, to the knowledge of the Special Rapporteur, failed to demonstrate genuine concern for those who remain missing in so far as it has yet to participate fully and in a cooperative spirit with both Governments and international humanitarian organizations that are seeking to resolve the cases on behalf of the next of kin. In particular, the Government

of Iraq failed even to attend (through a period of two years) the meetings of the trilateral commission established pursuant to the cease-fire that ended the armed conflict following the liberation of Kuwait. However, the Government of Iraq has attended the last two meetings of this commission and is endeavouring to resolve some of the cases, a development that the Special Rapporteur hopes will continue.

III. THE SITUATION OF THE MARSH ARABS

A. Introduction

34. The Special Rapporteur addressed the situation of the Marsh Arab people in several of his previous reports (A/47/367, paras. 7-16 and 28; A/47/367/Add.1, paras. 15-23, 34-35, 45, 53 (e) and 56; E/CN.4/1993/45, paras. 114-130; A/48/600, paras. 10-61; A/48/600/Add.1; and E/CN.4/1994/58, paras. 126-129 and 157). As in the past, the Special Rapporteur has again benefited from a variety of reports providing detailed information often supported by documentary evidence in the form of photographs, video-recordings and satellite imageries. As noted in paragraph 6 above, compelling testimonial evidence was also received from Marsh Arab refugees who arrived in the south-western part of the Islamic Republic of Iran in the summer of 1994.

35. During the above-mentioned mission to the Islamic Republic of Iran, the 2 human rights monitors met with a total of 40 newly arrived refugees from the Iraqi marsh area. All interviewees were able to provide recent information on the situation in the marshes. Most interviewees were also in very poor physical and psychological condition.

36. In addition, the people who fled from the southern cities also described the situation there. Army deserters, those involved in the opposition, as well as "tribal chiefs" often had a story of personal persecution in the past.

B. Substantive aspects

37. All refugees interviewed reported the dramatic decline of water in the southern marshes, especially in the summer of 1994, and emphasized that the main reason for their flight had been the drying of the marshes; the sinking water-level makes survival in the marshes more and more difficult, almost impossible. Because of the loss of water, the Marsh Arabs can basically no longer use their traditional boats. As the soils have dried out, the reed beds have died, thus depriving the tribespeople of their main material for building shelters and feeding their buffalo and cattle. The formerly self-sufficient agrarian and fishing traditions of the Marsh Arabs are now in extreme danger as fish stocks have been depleted and the necessary habitat has disappeared. In addition to being deprived of food, construction materials and means of transportation, there is almost no drinkable water left in any part of the marshes; in areas where there was still some water left, it had become salty or toxic owing to the fact that it had become stagnant.

38. Refugees and other sources report that many people in the marshes have no access to the monthly government food ration cards that are normally available to every Iraqi citizen. Several reasons were cited for this: (a) most of the residents of the marshes used to live on the margins of the system and are not officially registered and, therefore, do not have identification cards; (b) if, among a family or a tribe, a person had evaded service in the Iraqi Army or had deserted, the Iraqi Government would apply a collective punishment preventing the other members of the family from having food-ration cards; and (c) any citizen suspected of having taken part in the March 1991 uprisings and, more generally, those who are not aligned with the Iraqi Government are also deprived of ration cards. Since the marsh inhabitants have no direct access to food (because of the combined effects of the drying of the marshes, the international sanctions and government policies effectively depriving them of access), they had become dependent on intermediaries and smugglers who sold them flour, sugar and oil at black-market prices. In some areas of the marshes, women would sometimes go to nearby markets to buy food and basic goods, but on their way back they could be subject to many controls by Iraqi forces who would confiscate their merchandise. As the drying of the marshes continued and the Iraqi forces increased their control of the area, access to the zone became severely restricted and the inhabitants of the marshes became more and more isolated and dependent on the natural resources of the area they lived in. Since these natural resources have by now almost been completely destroyed, and since the inhabitants fear the government authorities, the refugees asserted that they have little other choice but to flee their natural territory.

39. Since the establishment of the "no-fly zone" in southern Iraq in August 1992, it is clear that artillery bombardments and mortar attacks on villages and towns in the vicinity of al-Amara, al-Nasiriyah and Basrah were stepped up. According to several eye-witness reports, government forces used long-range heavy artillery shelling against civilian settlements at night or during lunch and dinner time when families are typically gathered together; many refugees testified that they had lost family members in the indiscriminate bombardments, and some witnesses had themselves been injured and bore physical wounds from the shelling. Following bombardments, forces composed of regular army, Republican Guard and Special Forces would advance with their armoured vehicles, including tanks and heavy artillery and surround the villages of the area. After the capture of the region, the troops would enter the villages, carry out indiscriminate arrests and conduct house-to-house searches before burning the reeds and destroying the houses. Witnesses said that those who were arrested were taken away blindfolded, were frequently transferred to a detention centre and were never heard from or of again. Following the bombardments, it would take three days to one week for the inhabitants to rebuild their mostly reed houses, during which time they would have to sleep outside deprived of everything. Sometimes, after having finished rebuilding their houses, Iraqi forces would come and burn the houses again.

40. Access to health care is extremely rare for the inhabitants of the marshes. There are no clinics inside the marsh area and people are completely dependent on volunteers who are very few (e.g. one or two for a large area) who secretly provide some basic medical care. Those who can move to the cities can very often not afford the considerable fees for a medical consultation nor afford to buy medications. Access to government medical services is not available or

problematic because the Marsh Arabs are generally not registered and fear becoming so for the reasons given above.

41. There is no doubt that the violations referred to above have not come to an end. Military attacks on civilian settlements have continued to be reported through to the submission of the present report. The Special Rapporteur notes that the flow of Marsh Arab refugees into the south-western part of the Islamic Republic of Iran also continues, despite the fact that the physical obstacles to flight have increased as the marshes have been drained and embankments (patrolled by armed forces) have been constructed by the Government of Iraq.

42. All the refugees interviewed in the Islamic Republic of Iran stated that they had to pass through both dried and still wet marshes to get into the Islamic Republic of Iran. Most of them were in very poor physical and psychological condition. They usually travelled a part of the journey by boat, part by car, and the remainder by foot over dried marshland. The route was said to be very dangerous and most of the refugees needed a guide to escape from the many check-points established in the area. The cost of the guides was often very high and most refugees reported that they had sold everything they had in order to pay the guides.

C. Conclusions

43. In his last report to the Commission on Human Rights, the Special Rapporteur expressed his concern over the survival of the Marsh Arab people as a community, should no steps be taken to cease the repressive campaign against them (see E/CN.4/1994/58, para. 157). Specifically, the Special Rapporteur emphasized the need to reverse the draining of the marshes and end the indiscriminate military campaign against the population. Unfortunately, the Special Rapporteur can only conclude that the situation has deteriorated further with very large parts of the former marshes having dried out and, therefore, the environment so necessary to the Marsh Arab culture having been destroyed. The evidently determined policy of the Government of Iraq in this regard constitutes a gross violation of human rights.

IV. LEGAL APPLICATIONS OF CRUEL AND UNUSUAL PUNISHMENTS

A. The recent decrees

44. On 5 June 1994, the official Iraqi newspaper Al-Jumhuriya published the text of Revolution Command Council Decree No. 59 dated 4 June 1994 (see annex, document No. 1). Decree No. 59, signed by Saddam Hussein as Chairman of the Revolution Command Council, stipulates that anyone who commits certain specified property crimes, i.e. theft (including the stealing of a vehicle), shall have the right hand amputated at the wrist. In the event of a repeated offence, the decree stipulates that the person shall have the left foot amputated at the ankle. These punishments are to apply even in the absence of a simultaneous assault. The decree also stipulates that the death penalty is to be imposed if the theft is committed while armed or if it results in the death of a person. In a seemingly contradictory attempt to afford humanitarian exceptions, the

third paragraph of decree No. 59 excepts juveniles, spouses or relatives to the second degree from application of the decree's provisions, and it requires the value of stolen articles to exceed 5,000 dinars.

45. The punishments stipulated in Revolution Command Council Decree No. 59 are cruel and unusual and are in clear violation of Iraq's obligations under article 7 of the International Covenant on Civil and Political Rights. Moreover, both the letter and spirit of Decree No. 59 violate the object and purpose of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. While articles 3 and 4 of the aforementioned Declaration respectively oblige Iraq not to permit and, in fact, to prevent such punishments from being practised within its jurisdiction, the legalization of amputations for property crimes pursuant to Decree No. 59 constitutes torture in the form of "an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment" as defined by article 1 (2) of the Declaration. Further, and without implying that such punishments would in any case be compatible with Iraq's obligations under international human rights law, the Decree is applicable to simple thefts of property valued at as little as 10 United States dollars, according to information received by the Special Rapporteur regarding the current real exchange rate (between 500 and 600 Iraqi dinars to one United States dollar) in southern Iraq. Consequently, stipulation of the death penalty for such an offence where it may be aggravated by the carrying of a weapon is clearly disproportionate to the crime and, therefore, constitutes a violation of article 6 (2) of the International Covenant on Civil and Political Rights, which requires that the death penalty "may be imposed only for the most serious crimes".

46. On 24 July 1994, the official Iraqi newspaper Al-Thawra published the text of Revolution Command Council Decree No. 92 dated 21 July 1994 (see annex, document No. 2). Decree No. 92, signed by Saddam Hussein as Chairman of the Revolution Command Council, stipulates that anyone who falsifies an official document, for his or her own benefit or to the detriment of another person's rights, is subject to life imprisonment or amputation of the right hand at the wrist.

47. The punishments stipulated in Decree No. 92 are cruel and unusual and are in clear violation of Iraq's obligations under article 7 of the International Covenant on Civil and Political Rights. Like Decree No. 59 (see above), both the letter and spirit of Decree No. 92 violate the object and purpose of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Further, and without implying that such punishments would in any case be compatible with Iraq's obligations under international human rights law, Decree No. 92 is applicable to any official document (including, presumably, a library card), such that the punishment of life imprisonment may very frequently be extremely disproportionate to the offence committed.

48. On 1 August 1994, the text of Revolution Command Council Decree No. 93, dated 23 July 1994, was published in the Arabic version of the Official Gazette of Iraq (see annex, document No. 3): Decree No. 93, signed by Saddam Hussein as Chairman of the Revolution Command Council, prohibits deserters from, and

evaders of, military service from concluding or maintaining contracts for the use of agricultural or industrial properties; purchasing, leasing or in any sense using State-owned property; engaging in commerce; and making use of land or new housing owned by the State or the Socialist sector. By subsequent Revolution Command Council Decree No. 116 of 25 August 1994, published in the Arabic version of the Official Gazette of Iraq on 12 September 1994 (see annex, document No. 4), Decree No. 93 was extended to prohibit deserters and evaders from acquiring ownership of real estate in any way.

49. The punishments prescribed by Decree No. 93 are additional to previously prescribed punishments of imprisonment or death for desertion or evasion of military service. Consequently, Decree No. 93 augments the severity of punishment for desertion and evasion, and, in so far as the decree simply states that it will enter into force upon its publication in the Official Gazette (without specifying that it will apply to offences committed only thereafter), it appears that Decree No. 93 would also apply to all persons holding the status of "deserter" or "evader", i.e. those currently serving sentences and, possibly, even those having served sentences. Such retroactive effect would constitute a violation of article 15 (1) of the International Covenant on Civil and Political Rights, which proscribes the imposition of a heavier penalty than was applicable at the time when a criminal offence was committed.

50. Irrespective of whether or not Decree No. 93 has any retroactive effect, the articulated provisions of the decree evidently aim to impoverish deserters and evaders of military service, and perhaps their dependant families. By limiting so broadly the possibilities for such persons to obtain gainful employment or to earn their own living as a result of certain agricultural, industrial or commercial endeavours, Decree No. 93 offers potential deserters or evaders virtually no choice but to succumb to military conscription orders. This is especially so because of the extremely pervasive nature of the Iraqi State in its ownership of property and enterprises in the country, and its considerable regulation of the economy in general. It must also be recalled that the effect of Decree No. 93 is very wide because of the very large size of the armed forces in Iraq, which depend upon conscription. However, notwithstanding the evident aim of Decree No. 93 or its very wide application, its provisions constitute a violation of article 6, taken in conjunction with article 2, of the International Covenant on Economic, Social and Cultural Rights ensuring the right to work without discrimination of any kind, including social status. Decree No. 93, as supplemented by the provision of Decree No. 116, also constitutes a violation of article 17, both alone and in conjunction with article 2, of the Universal Declaration of Human Rights regarding the right to property and freedom from discrimination on the basis of social status.

51. On 26 August 1994, the official Iraqi newspaper Al-Thawra published the text of Revolution Command Council Decree No. 109 dated 18 August 1994 (see annex, document No. 5) which was published in the Arabic version of the Official Gazette of Iraq on 29 August 1994, thus bringing the Decree into effect according to its fourth paragraph. Decree No. 109, signed by Saddam Hussein as Chairman of the Revolution Command Council, stipulates that an "x" symbol of specified dimensions shall be tattooed between the eyebrows of every person who has been legally punished by amputation. The Decree specifies that such tattooing shall be conducted according to medical requirements in the relevant

hospital. The Decree also explicitly provides in paragraph 4 that the punishment of tattooing shall have retroactive effect.

52. The punishment stipulated in Revolution Command Council Decree No. 109 is cruel and unusual and is in clear violation of Iraq's obligations under article 7 of the International Covenant on Civil and Political Rights. Its retroactive effect constitutes a violation of article 15 (1) of the International Covenant on Civil and Political Rights (see para. 49 above). Moreover, both the letter and spirit of Decree No. 109 violate the object and purpose of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The evident aim of the decree is not only to disable the victim as a form of punishment, but also to brand the person so that he or she may be readily identifiable and, thus, subject to public scorn, ridicule and humiliation. Such a punishment strikes at the core of human dignity and is offensive to the very concepts underlying human rights.

53. On 7 September 1994, the official Iraqi newspaper Al-Iraq published a summary of the provisions of Revolution Command Council Decree No. 115 dated 25 August 1994; the full text of the decree was published in the 12 September 1994 issue of the Arabic version of the Official Gazette of Iraq (see annex, document No. 6). Decree No. 115, signed by Saddam Hussein as Chairman of the Revolution Command Council, stipulates that deserters from, or evaders of, military service, or anyone who shelters them, shall have the external part of an ear cut off and an "x" symbol of specified dimensions tattooed between the eyebrows; in the case of a second offence, the other ear is to be cut off, while a third offence is to be punished by death by firing squad. Decree No. 115 has explicit retroactive effect, but is to be suspended should deserters or evaders who are at large surrender within a limited period of time.

54. The punishment stipulated in Revolution Command Council Decree No. 115 is cruel and unusual and is in clear violation of Iraq's obligations under article 7 of the International Covenant on Civil and Political Rights. Its retroactive effect constitutes a violation of article 15 (1) of the International Covenant on Civil and Political Rights (see para. 49 above). Moreover, both the letter and spirit of Decree No. 115 violate the object and purpose of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The evident aim of the Decree is to brand the person so that he or she may be readily identifiable and, thus, subject to public scorn, ridicule and humiliation. Such a punishment is odious to the very concepts underlying human rights.

55. On 12 September 1994, the text of Revolution Command Council Decree No. 117, dated 25 August 1994, was published in the Arabic version of the Official Gazette of Iraq (see annex, document No. 7). Decree No. 117, signed by Saddam Hussein as Chairman of the Revolution Command Council, prohibits anyone from removing the "x" symbol tattooed as a result of the commission of a crime punishable by amputation. The Decree also stipulates that anyone assisting with removal of the tattoo or who carries out cosmetic surgery on an amputated hand or ear shall be subject to the same punishments. Moreover, Decree No. 117 stipulates that the noted punishments to which persons have been subjected shall

be recorded in various public records and identity documents. In a seemingly odd third paragraph, Decree No. 117 provides that "the civil and penal consequences of the penalty of amputation of the hand or the ear and the tattoo shall be annulled" if the person "performs a patriotic or heroic act".

56. The prohibition of assistance to persons who have been legally maimed by the prescribed tattoo or who suffer malformations as a result of the prescribed amputations renders the victims even more helpless and subjects them to even more severe punishment. Extending these horrendous punishments "as appropriate" to persons who attempt to offer subsequent assistance out of humanitarian concern, including medical practitioners who may be obliged by professional oaths to offer assistance, subjects innocent persons who have committed no criminal offence to extreme punishments and constitutes a yet more serious aggravation of the already gross violations referred to above; the Special Rapporteur fails to see how any of these provisions could ever be "appropriate". Moreover, by stipulating that public records and identity documents shall specify the punishments suffered, the victims will be subjected to further humiliation and probable discrimination. To imply that the "civil and penal consequences" of the penalties of amputation could ever be "annulled" is to dismiss the real and enduring consequences of the punishments and to ascribe to a mere decree physical powers which in nature are well beyond it.

57. On 12 September 1994, the text of Revolution Command Council Decree No. 145, dated 5 September 1994, was published in the Arabic version of the Official Gazette of Iraq (see annex, document No. 8). The decree, signed by Saddam Hussein as Chairman of the Revolution Command Council, stipulates that anyone liable to compulsory military service shall be released from service following completion of the 90-day basic training and payment of "an exemption tax of 1 million dinars in cash".

58. Decree No. 145 is a blatant sale of privilege to the very few who can afford the exorbitant tax. A typical government salary is about 2,000 dinars per month, i.e. 1/500th of the exemption tax. According to the official exchange rate, the exemption tax exceeds US$ 3 million. As a result, Decree No. 145 enables only a tiny fraction of the population, i.e. the very richest, legally to avoid compulsory military service and, thus, the potential effects of the amputation and tattooing decrees referred to above. By contrast, the effect of Decree No. 145 is to render the rest of the population subject to the aforementioned decrees since there are virtually no other ways for able-bodied persons legally to avoid compulsory military service. As such, Decree No. 145 constitutes discrimination on the basis of property.

59. With respect to all of the decrees referred to above, the Special Rapporteur observes that the legal basis on which they are decreed and promulgated derives from the provisions of article 42, paragraph 1, of the Provisional Constitution of the Republic of Iraq. While the decrees appear, therefore, compatible with Iraq's "revolutionary" constitutional order, the Special Rapporteur refers to his previous comments about the abuse of power the order engenders, and its compatibility with the standards of international human rights law which the State of Iraq is obliged to respect (see E/CN.4/1994/58, paras. 159-184, and especially para. 164).

B. Implementation of the decrees

60. As detailed above, the mere existence of the various decrees constitutes violations of Iraq's international obligations in so far as they legalize, authorize and promote the application of cruel and unusual punishments. Implementation of the said decrees involves other violations. The scope and breadth of implementation is also of interest to the Special Rapporteur in assessing the extent of the violation; in so far as they proceed from generally applicable laws, the whole population may be said to be affected to a degree, but implementation would affect certain persons more specifically and, obviously, more severely.

61. The Special Rapporteur has received reports alleging widespread implementation of the decrees. These reports are supported by detailed testimonies and documentary evidence in the form of newspaper articles from the official Iraqi press and even a video-recording of an Iraqi television news broadcast showing a victim of implementation of Decree No. 59. Reports have been received from all regions of the country, indicating also that implementation is taking place on a wide scale. In an article published in the official Iraqi newspaper Al-Jumhuriya on 6 July 1994, it was reported that the Minister of Trade, Muhammad Mahdi Salih, emphasized the applicability of Decree No. 59 "providing for amputation of the hand of anyone who contravenes the stipulations contained in Ministry of Trade Declaration No. 1 of 1994 concerning the obligation of owners of bakeries and baking ovens to abide by the instructions concerning the production of flat bread and loaves". In such circumstances, the Special Rapporteur fears that much of the population of Iraq may be, or become, subject to Decree No. 59 prescribing amputations.

62. According to a report dated 24 June 1994 received from Amnesty International, two men were sentenced by the Criminal Court of Diyala to amputation of the hand for stealing carpets; the sentences were reportedly carried out in July. Amnesty International reported on 1 September 1994 the sentencing of two more men to amputation of the hand, and tattooing of the forehead, upon conviction of charges of theft of a car and factory goods, respectively. On 6 October 1994, Amnesty International reported the amputation of the hand and the branding of the forehead of one Ali Ubaid Abed Ali for having stolen a television and 250 Iraqi dinars (equivalent to about 50 United States cents at the present real rate of exchange). The latter was shown from a hospital, in an apparent state of shock, on the Iraqi television news broadcast on the evening of 9 September 1994; his forehead appeared to have been branded with a large "x" between the eyebrows, the stump of his right arm was bandaged and, in a gruesome display, the severed hand was shown laying on a blue sheet. The Special Rapporteur is in possession of a video-tape copy of the aforementioned broadcast.

63. From the south of Iraq, the Special Rapporteur has received reports that several deserters from, and evaders of, military service have had their ears cut off, frequently in appalling conditions and often without the benefit of anaesthetic. One report alleges that two citizens, Hassan Ali Kadhim and Khaz'al Abid Mansour, both of the city of Nasiriyah, died after 10 days of head and chest inflammation that followed the amputation of their ears; the operations were said to have been carried out in the military hospital in

Nasiriyah sometime in September. Another report alleges that approximately 150 deserters had their ears cut off in Saddam Military Hospital in the city of Amara at the end of August; the names of some victims were provided to the Special Rapporteur. Hundreds of men were also said to have been rounded up in Basrah Governorate during the week of 5 September 1994 and taken to Al-Jumhuriya and Saddam Hospitals in Baghdad in order to undergo amputation.

64. From the northern part of Iraq that remains under Government control, the Special Rapporteur has received reports also indicating widespread implementation of Decree No. 115. Reports from the city of Mosul allege that hundreds of young deserters and evaders of service have been brought to hospitals for the surgical procedures during the last several weeks. Reports further indicate that one man died of haemorrhaging following an operation, while other victims committed suicide.

65. One particularly telling testimony received by the Special Rapporteur comes from a military physician who fled Government-controlled Iraq not long after the implementation of Decree No. 115. According to the witness, doctors are expected to carry out the operations; and in response to those who were refusing, the Revolution Command Council proclaimed Decree No. 117 in order to force doctors to do so. Military doctors are under the additional pressure of military orders to perform the operations; in addition to the punishments prescribed by Decree No. 117, disobedience is punishable by imprisonment and possible execution. Since the witness considered the new decrees to be instructions to mutilate and, as such, to be contrary to his professional ethics, he fled and, consequently, he is now a deserter. Prior to fleeing, however, he claims to have witnessed many such operations. He explained that, in so far as the decrees are retroactive, there are several hundred deserters and evaders already under detention on whom the operations are being carried out. The witness testified that victims would be brought in groups from their dirty and overcrowded detention cells. They would arrive blindfolded and with their hands tied behind their backs. They would usually be given only a local anaesthetic. Since the decrees lack sufficient precision for surgical purposes, they are said to be implemented in various ways, with some doctors endeavouring to minimize the mutilations. However, the conditions are also said to be poor and the risks of infection high; doctors are prohibited from providing follow-up care, especially cosmetic surgery. The witness testified that there is considerable arbitrariness in the selection of the victims; there is no judicial procedure and bribing is said to be common, such that the poor are especially affected. Some victims were said to have died because of infections, while some others were said to have committed suicide. The doctor further testified that the numbers of operations were so many as to require civilian doctors to be brought to prisons to perform the operations rather than have large numbers of persons brought to hospitals.

66. With respect to the specific punishment of tattooing, subsequent reports have indicated that the punishment is rather one of branding with a hot iron. These reports are supported by the above-mentioned Iraqi news broadcast, which clearly showed the victim's forehead bearing a large and uneven "x" between his eyebrows; the mark very much lacked the prescribed precision of a "tattoo" and bore more similarity with the inexact scar of hot iron branding. The absence of

specific surgical instructions accompanying the decrees certainly gives rise to some difficult, if not bizarre, issues concerning implementation.

67. Reports and testimonies indicate that the decrees appear to be having their apparently intended effects. Prior to the decrees, many people had evidently been avoiding military service. Owing to the severe economic conditions within the country, remuneration for military service apparently does not adequately cover the living costs of many families. Similarly, thefts had increased considerably owing to the same severe economic conditions. The systematic maiming of deserters, evaders and thieves has reportedly instilled sufficient fear into the population so as to invoke better compliance with conscription orders. But thousands of potential victims are reportedly hiding from arrest and imposition of the punishments. The specific effects on the crime rate are unknown.

C. Conclusions

68. The Special Rapporteur concludes that the decrees addressed above constitute flagrant and determined violations of Iraq's international human rights obligations in so far as they prescribe cruel and unusual punishments and in so far as implementation of the decrees compounds these violations by involving torture. There is no doubt about the existence of the decrees, nor of their implementation; the Government of Iraq publicly declares and advertises these facts. There is no doubt either, therefore, about the responsibility of the State of Iraq for the existence and implementation of these decrees, which are not only incompatible with Iraq's obligations to respect fundamental human rights, but which constitute an affront to the humanitarian values of the international community.

69. The cumulative effect of the promulgation and implementation of the decrees is a calculated attack on the dignity of the Iraqi population inasmuch as the barbaric punishments instil specific fears and general terror among the population through the horror naturally created by the prospect of the implementation of the decrees. In so doing, it appears clear that the Government of Iraq ruthlessly aims to obtain uniform compliance by the population with duties that may run counter to one's individual conscience.

70. One particularly sad aspect of the effects of the decrees is the prescribed diversion of medical services, including personnel and material resources such as drugs and surgical instruments, away from health-related activities and for the purposes of legalized mutilations (see, in particular, annex, document No. 5, Decree No. 109, paras. 2 and 3. At a time when the people of Iraq are suffering severe shortages of medications owing to the Government's refusal to cooperate fully with international humanitarian organizations in terms of Security Council resolution 688 (1991) or to accept the material benefits that would flow from the so-called "food for oil" proposal contained in Security Council resolutions 706 (1991) and 712 (1991), it seems intolerable that the Government of Iraq would purposefully divert limited health resources to such ends.

71. As described by the Special Rapporteur in his last report to the Commission on Human Rights and as noted above, the legalization of such cruel and unusual punishments are due to the structure of power in Iraq, which permits extreme, yet routine, abuses by a small number of persons who are not only "above the law" but who, according to the prevailing legal order, are virtually synonymous with the law. The decrees (and their effects) addressed above constitute simply one aspect of the present order in Iraq. Such decrees, and such an order, can in no way be said to be compatible with respect for human rights.

V. POLITICAL KILLINGS

A. Introduction

72. Since taking up his mandate in the summer of 1991, the Special Rapporteur has received detailed information concerning what he has called "political killings". In previous reports, this phrase has been used to describe pre-planned killings of individuals, carried out by government agents upon orders, from "the murder of village mayors to Ministers of State and from high-street assassinations to elaborate extraterritorial thallium poisonings" and including three separate and largely unexplained helicopter accidents that took the lives of two Generals in 1988 and the Minister for Defence in 1989 (see A/46/647, para. 19).

73. The Special Rapporteur has continued to receive and investigate allegations of political killings. In his second report to the Commission on Human Rights, the Special Rapporteur reported on two incidents of alleged political killings: (a) the March 1992 attempted assassination of persons by thallium poisoning; and (b) the successful assassination by gun-fire of Mr. Moayyad Hassan Al-Janabi in Amman on 7 December 1992 (see E/CN.4/1993/45, paras. 37-39). The Special Rapporteur also reported on political killings in his third report to the Commission (see E/CN.4/1994/58, para. 23).

74. Unfortunately, the Special Rapporteur has continued to receive reports of political killings, including notable cases that occurred in the last six months.

B. Some recent cases

1. The case of Sheikh al-Tamimi

75. On 12 April 1994, the Iraqi citizen Sheikh Talib Al-Suheil Al-Tamimi was killed in Beirut allegedly by two members of the Iraqi Embassy in Lebanon. The 70-year-old Sheikh Talib Al-Suheil Al-Tamimi, who had been living in Jordan for more than 20 years, was a leader of the Beni Tamim tribe of central Iraq and was a member of the Executive Committee of the Free Iraqi Council. He was in Beirut to attend the marriage of his daughter when two men rang the doorbell of his apartment and shot him in the chest. The report of the coroner confirmed that Sheikh Al-Tamimi had been shot in the chest with a 7.65 millimetre calibre military pistol fitted with a silencer.

76. In connection with the assassination, the Lebanese authorities arrested two Iraqi diplomats posted to the Iraqi Embassy in Beirut. The Lebanese authorities have demanded the handing over of two other Iraqi diplomats who are suspects said to have sought refuge in the premises of the Iraqi Embassy. According to the Government of Lebanon, the two arrested admitted that they work for the Iraqi Intelligence services and confessed that they had come to Lebanon under diplomatic cover in order to kill Sheikh Al-Tamimi. The Government of Lebanon has also confirmed to the Special Rapporteur that the two detained Iraqi diplomats confessed to the assassination in the presence of the Iraqi Chargé d'affaires in Beirut and confessed further that the specific execution order was received by telex from Baghdad. The Lebanese newspaper Al-Nahar reported on 16 April 1994 that, in the context of investigations, Lebanese forces searched the houses of the two diplomats and found two 7.65 millimetre calibre military pistols.

77. Following the assassination of Sheikh Al-Tamimi and the arrest of the two suspects, Lebanese authorities demanded that Iraq withdraw the diplomatic immunity of the two diplomats and surrender the two other suspects. On 18 April 1994, with the Lebanese authorities having received no reply from Iraq, and as the confessions by the two diplomats had clearly pointed out Iraqi government involvement, Lebanon decided to sever its diplomatic relations with Iraq and ordered the closure of the Iraqi Embassy in Beirut.

2. The case of Lissy Schmidt

78. In the afternoon of 3 April 1994, the German journalist Lissy Schmidt and her Kurdish bodyguard, Aziz Qadir, were shot dead as they drove on the road between Said Sadiq and the city of Sulaymaniyah. Ms. Schmidt, who had been working in the northern region for a period of three years, was a freelance correspondent principally for the French news agency Agence France Presse.

79. Soon after Ms. Schmidt's assassination, local Kurdish officials arrested two residents of Kirkuk Governorate who confessed to having killed Ms. Schmidt and to having been responsible for other terrorist activities against foreigners in the northern region on behalf of Iraqi intelligence services (Mukhabarat) and for a fee of US$ 1,000 each. The assassins also explained that their families had been taken hostage by the Iraqi authorities pending the successful completion of their terrorist activities in the northern region. The Special Rapporteur is in possession of the names of the confessed killers, the name of the Iraqi intelligence officer who gave them their instructions and a report from the head of security in the northern Kurdish region of Iraq.

3. The case of Mohammed Taqi Al-Khoei

80. Following two years of relentless intimidation and harassment, including specific threats against him dating from his March 1991 arrest with his father, the late Grand Ayatollah Abul Qasim Al-Musawi Al-Khoei, Mohammed Taqi Al-Khoei died in a sudden car accident on the night of 21 July 1994. Specifically, Mr. Al-Khoei was returning to Najaf after having made his weekly visit to the Shiah holy shrine in Karbala when his car crashed into an unlit truck blocking

the divided highway. According to information received by the Special Rapporteur, the accident occurred at about 11 p.m. and resulted in the instantaneous deaths of Mr. Al-Khoei's driver and six-year-old nephew. However, Mr. Al-Khoei and his brother-in-law, Amin Khalkhali, lay for hours beside the road and eventually bled to death before an ambulance was called at around 4 a.m. in order to remove their bodies.

81. Reliable information received by the Special Rapporteur details how Mr. Al-Khoei had been instructed by Iraqi government authorities, on several occasions, to cease his activities abroad in representation of the Shiah religious establishment and community in Iraq, especially his concern over 105 still missing clerics and their family members and government interference in religious affairs in general. Indeed, information in the possession of the Special Rapporteur had caused him to express concern for the safety of Mr. Al-Khoei on two public occasions: in a speech before the Security Council on 11 August 1992 (see S/PV.3105) and in a report to the Commission on Human Rights in February 1993 (E/CN.4/1993/45, paras. 143, 152, 161 and 183). Mr. Al-Khoei had been denied permission to leave Iraq just before his death, causing him to communicate his fears to relatives outside Iraq.

82. With grave concern over the circumstances of Mr. Al-Khoei's death, the Special Rapporteur addressed a letter dated 15 August 1994 to the Minister for Foreign Affairs of the Republic of Iraq requesting the results of a full investigation of the accident and clear identification of those responsible. The Government of Iraq has yet to respond to the request. At the same time, the car involved in the accident was reportedly burned and the driver of the truck cannot be found.

83. Mr. Al-Khoei's death was followed that same morning by his burial, which was reportedly rushed by government officials against the objections of the family. In early October 1994, the Special Rapporteur received information that the Government of Iraq had sequestrated the former home of Mr. Al-Khoei's father (evicting the remaining members of his family) together with 42 other houses which formed part of the religious endowment of the Al-Khoei Foundation of which Mohammed Taqi Al-Khoei was the General Secretary until his death.

C. Conclusions

84. The relevance of the discussion of political killings in Iraq derives from the nature of the violations. As reprehensible as they are as violations of the individual victim's right to life, political killings are most notable because of their intent to violate, by means of terror, the freedoms of opinion and expression of particular groups or the population as a whole. The Special Rapporteur has previously addressed the issue under the broader title "violations affecting the population as a whole" because, although the cases concern the killing of a particular person, the aim of the killing is a political one with the objective of silencing dissent and suppressing opposition.

85. Like all political killings, the assassination of Sheikh Talib Al-Suhail Al-Tamimi is regarded by several sources as a general warning to the opposition

(and perhaps the international community) that the Iraqi Government remains strong, has a long arm and can commit such acts as it wishes, with impunity.

86. The specific context of the assassination of Lissy Schmidt is found in a series of other attacks in the northern Kurdish region at the time, including the bombing of a Swedish journalist's car, injuring the journalist, ambushes of United Nations Guards Contingent vehicles (injuring three United Nations guards), etc.; reports indicated that "bounties" were being offered by Iraqi security services for attacks in the north, especially against foreigners. Certainly, international humanitarian non-governmental organizations (NGOs) understood the attacks, especially the assassination of Ms. Schmidt, as an "alarm signal", which caused some organizations to leave and most to take new security precautions.

87. The death of Mr. Al-Khoei must be viewed in relation to the previous threats against him, his special role as a leading member of the Shiah religious establishment in Iraq, and the history of similar terrorist acts committed against opponents of the Government. The death came in the midst of a collection of repressive acts against the Shiah, such as the closing of the Al-Khadra mosque in Najaf. Moreover, it must be recalled that governmental authorities have been associated with a series of previous fatal car accidents, apparently engineered, such as the well known cases of the former President's son, Mohammed Ahmad Hassan Al-Baqr, the former President of the Workers' Union, Khaled Mouhssen, the Former Minister of Agriculture, Nafid Jalal, the former Minister of Oil, Flaya Hassan al-Jasim, and the former Minister of Justice, Hussein al-Safi.

88. Indeed, Iraq has a long history of terrorist activities, not just within its own territorial jurisdiction, but beyond, as the Al-Tamimi case evidently demonstrates. Such political killings constitute not only a gross violation of the individual victim's human rights, but, by means of terrorism, they constitute a gross violation of the human rights of entire groups of people and, indeed, the population as a whole.

VI. THE RIGHTS TO FOOD AND HEALTH

A. Introduction

89. Iraq is bound to respect the rights to food and health of all persons within its jurisdiction, pursuant to articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, to which Iraq is a State Party. The Special Rapporteur has assessed Iraq's compliance with its obligations to respect the rights to food and health in each of his previous reports (E/CN.4/1992/31, paras. 81-83, 138, 143 (w), 145 (o) and (p), and 158; A/46/647, paras. 52-54, 55 and 95-98; A/47/367 para. 14; A/47/367/Add. 1, paras. 6-14, 56 (a), (b) and (c) and 58 (a), (b) and (c); A/48/600, paras. 33-42, 44-46, 58-59 and 62-88; and E/CN.4/1994/58, paras. 72-79, 152 and 186). Given the special importance attached to the rights to food and health in the prevailing circumstances in Iraq, the Special Rapporteur has continued to seek and to receive detailed information about the situation of

access to food and health care in Iraq. A continuous flow of information has been received from government, inter-governmental and non-governmental sources.

B. Substantive aspects

90. A fairly striking aspect of this subject is to be found in the near unanimity of reports: the situation in Iraq continues to deteriorate. In this connection, the Special Rapporteur takes note of the contents of the extension of the cooperation programme of the United Nations Inter-Agency Humanitarian Programme in Iraq (1 April 1994-31 March 1995) produced by the Department of Humanitarian Affairs of the United Nations Secretariat. More recently, the Special Rapporteur has taken note of the following documents produced by the same Department: the mid-term implementation report (1 April-30 September 1994); planned activities (1 October 1994-31 March 1995); and summary of financial status of contributions (up to 30 September 1994). In addition, the Government of Iraq has, through its Permanent Mission to the United Nations Office at Geneva, regularly provided the Special Rapporteur with information describing the deteriorating situation in the country. In the absence of the Government of Iraq's agreement to station human rights monitors throughout Iraq, the Special Rapporteur has no independent means of measuring or assessing the basic statistical reports communicated to him. However, given the overwhelming agreement on the trends, the Special Rapporteur has no reason to doubt the essential findings of these sources of information.

91. Of evident relevance to the situation of economic rights generally in Iraq are the effects of the sanctions placed on Iraq pursuant to Security Council resolution 661 (1990) of 6 August 1990. As the Special Rapporteur has noted in the past, it must be understood that resolution 661 (1990) explicitly exempts medications and, in humanitarian circumstances, foodstuffs. There is, as such, no embargo on the purchase or supply of medications or foodstuffs. In addition, Security Council resolution 688 (1991) of 5 April 1991 places a special obligation on Iraq to cooperate with international humanitarian agencies and organizations in receiving medications, foodstuffs and related materials for humanitarian purposes in Iraq. Moreover, Security Council resolutions 706 (1991) of 15 August 1991 and 712 (1991) of 19 September 1991 enable Iraq to sell, under United Nations supervision, up to US$ 1.6 billion of oil, of which US$ 900 million would be for medications and foodstuffs. Unfortunately, the Government of Iraq's policy has been thus far not to accept the United Nations-supervised sale of oil for humanitarian purposes, thereby depriving the Iraqi people of the benefits of that significant resource.

92. In the light of the disturbing fact that access to food and health care continues to decline in Iraq for virtually the entire population, it is perhaps more disturbing that little else has changed concerning those matters which the Special Rapporteur has been reporting upon in relation to food and health in Iraq. Specifically, the obvious imbalance between military expenditure and resources allocated to the fields of health care and nutrition continues to illustrate clearly the priorities of the Government of Iraq. Most recently, the Government somehow mustered the overall resources to transport tens of thousands of heavily armed troops up and down the country towards the border with Kuwait. Yet, the Special Rapporteur regularly receives information detailing, e.g., how

difficult it is to obtain spare parts for vehicles to transport fresh water to communities in the southern governorates. Similarly, the status quo remains concerning the evident discrimination within the country at least on a regional basis (if not motivated by other concerns), i.e. the northern region from which the Government withdrew its administration in October 1991 remains under a tight, if not tighter, economic blockade. The central cities of Iraq, especially Tikrit, Samara and parts of Baghdad, continue to enjoy privileges in the distribution of limited resources; while the infrastructure of Baghdad was rebuilt after the Gulf war, that of the southern cities has noticeably lagged behind. Among the social groups of Iraqi society, certain groups remain privileged by comparison to others, e.g. the military and Baath Party elite, although the number of privileged groups appears to be declining along with the number of persons enjoying special privileges within the protected groups. The particularly desperate situation of the Marsh Arab population has been described in section III above.

93. One thing that has changed quite significantly is the amount of nutritional subsidy provided by the Government to each Iraqi citizen. On 24 September 1994, the Government decided that, effective 1 October 1994, the subsidized food ration would be reduced by approximately one third in terms of calorie content. According to a report of the United Nations Children's Fund (UNICEF) published in Baghdad in early October 1994 entitled "Impact of the reduction in food ration on the most vulnerable children and women", the reduction in the government rations means that "more than 2.5 million children, pregnant women and lactating mothers are likely to be at risk." The same report notes that "civil servants and members of the armed forces will receive an allowance of ID 2,000 (US$ 3) a month to meet the shortfall". In addition, the report goes on to point out, the printing of new money to enable the Government to maintain these payments "is likely to further accelerate inflation". Clearly, the most vulnerable will be those outside government pay-rolls and otherwise limited in their possibilities to obtain additional income, such as pensioners and disabled persons. If the Government of Iraq continues to refuse to change its policies, especially concerning Security Council resolutions 706 (1991) and 712 (1991), and in the absence of substantial increases in support for the United Nations Humanitarian Programme in Iraq, many people will suffer even more, including with the loss of their lives.

C. Conclusions

94. The Special Rapporteur recalls that human rights are indivisible and inalienable. They attach to every person by virtue simply of the fact of being human. They are not granted or allotted by the Government of Iraq, the Revolution Command Council or President Saddam Hussein. Having undertaken to respect the specific terms of certain international standards within the jurisdiction of the State of Iraq, the Government and its high officials are under an obligation to respect the human rights of each person in Iraq to food and health.

95. The Special Rapporteur has previously pointed out that respect of the rights to food and health requires specific actions on the part of the Government. Essentially, the Government must distribute the resources at its

disposal for the fullest enjoyment of all humans within its jurisdiction, without discrimination. The Government of Iraq is similarly under a legal obligation to take advantage of such additional resources as may be available to it in order to respond to the needs of the people. In the specific circumstances of the case at hand, this means that the Government of Iraq must cooperate fully with international humanitarian agencies and organizations that offer assistance, both in terms of its obligations arising under the International Covenant on Economic, Social and Cultural Rights and, more explicitly, under Security Council resolution 688 (1991). The Government of Iraq must also accept the United Nations's offer of a supervised sale of "oil for food" under the terms of Security Council resolutions 706 (1991) and 712 (1991).

96. The Special Rapporteur notes that the Government of Iraq has cooperated to a significant degree with United Nations humanitarian agencies on a number of questions. But the Government has also imposed requirements that have not facilitated delivery of assistance swiftly and efficiently to all parts of the country; for example, the United Nations agencies were long since required to withdraw their offices and international staff from the southern governorates. Iraq has also failed to contribute the money it agreed to provide for the Humanitarian Programme in Iraq as a result of the two memoranda of understanding it signed with the United Nations. Moreover, Iraq's stringent operating requirements for humanitarian NGOs have dissuaded most major NGOs from participating in humanitarian projects in government-controlled Iraq.

97. As the situation deteriorates and the Government continues to calculate and publish its own statistics on rising infant mortality rates, the Government also continues to refuse to access the resource benefits of Security Council resolutions 706 (1991) and 712 (1991) on the grounds that to do so would "violate Iraq's sovereignty" or be "insulting". Neither of these assertions has been demonstrated. Instead, while the people suffer and die, Ministers and Generals sit comfortably in their protected environments and argue about abstract infringements of "sovereignty" and alleged "insults". Such determined arguments in the face of widespread and increasing suffering are clearly reprehensible and underlie a gross violation of the fundamental human rights of millions of innocent persons.

98. Finally, the Special Rapporteur cannot help but point out that, had Iraq taken advantage of the sale of "oil for food" authorized by Security Council resolutions 706 (1991) and 712 (1991) in the fall of 1991, there may well have been billions of dollars of resources available for desperately needed medications and foodstuffs and, by the Government of Iraq's own statistics, hundreds of thousands of lives would have been saved.

VII. RECOMMENDATIONS

99. With regard to the matters addressed above, the Special Rapporteur recommends:

(a) That the Government of Iraq act swiftly and with the fullest spirit of cooperation to resolve the cases of Kuwaitis and third-country nationals who disappeared in detention during or subsequent to the Iraqi occupation of Kuwait;

(b) That, in accordance with its obligations under article 118 of the Third Geneva Convention and articles 133 and 134 of the Fourth Geneva Convention, the Government of Iraq provide detailed information on all persons deported from Kuwait between 2 August 1990 and 26 February 1991 and release without further delay any such persons who may remain in government custody;

(c) That, in accordance with its obligations under articles 120 and 121 of the Third Geneva Convention and articles 129, 130 and 131 of the Fourth Geneva Convention, the Government of Iraq provide detailed information on all persons arrested in Kuwait between 2 August 1990 and 26 February 1991, including the fate of those persons;

(d) That, in accordance with its obligations under articles 120 and 121 of the Third Geneva Convention and articles 129, 130 and 131 of the Fourth Geneva Convention, the Government of Iraq provide detailed information on all persons arrested in Kuwait between 2 August 1990 and 26 February 1991 who died in detention during or after that period, as well as information on the location of their graves;

(e) That, in accordance with its obligations under articles 101 and 107 of the Third Geneva Convention and articles 74 and 75 of the Fourth Geneva Convention, the Government of Iraq provide detailed information on all executions of persons arrested in Kuwait between 2 August 1990 and 26 February 1991, whether carried out in Kuwait or Iraq during or after that period, as well as information on the location of their graves;

(f) That, in an effort to resolve the cases of missing Kuwaitis and third-country nationals, the Government of Iraq cooperate with international humanitarian organizations, such as ICRC, facilitate their work and repatriate to their countries of origin all missing persons or their remains, as the case may be;

(g) That the Government of Iraq pay appropriate compensation to the families of such persons who died while in the custody of Iraqi authorities during or subsequent to the Iraqi occupation of Kuwait;

(h) That the Government of Iraq pay compensatory support to the families of persons who were known to be in the custody of Iraqi authorities during or subsequent to the Iraqi occupation of Kuwait, but for whom the Government is so far unable to account;

(i) That, in relation to the southern marsh area and its Marsh Arab population, the Government of Iraq implement without further delay the

recommendations made by the Special Rapporteur in his interim report to the forty-eighth session of the General Assembly (see A/48/600, para. 82) including the immediate halting and reversal of the draining of the marshes and the cessation of its military activities against the civilian population of the area;

(j) That the Government of Iraq immediately abrogate Revolution Command Council Decrees Nos. 59, 92, 93, 109, 115, 116, 117 and 145 and all such other similar laws, decrees, regulations or orders authorizing, or relating to, amputations;

(k) That the Government of Iraq immediately cease to terrorize its civilian population in general, and political opposition groups in particular, by the commission of political killings both within and outside Iraq;

(l) That the Government of Iraq end its internal economic embargoes on both the northern and the southern regions and take steps to cooperate with international humanitarian agencies in the provision of relief to those in need throughout Iraq, as required, inter alia, by Security Council resolution 688 (1991);

(m) That, in order to end the unnecessary suffering of the people of Iraq and to save lives, the Government of Iraq immediately, and at long last, act to take advantage of the "food for oil" formula under Security Council resolutions 706 (1991) and 712 (1991), which, as the Secretary-General has confirmed, would enable the Government to purchase hundreds of millions, if not billions, of dollars worth of urgently needed foodstuffs and medical supplies;

(n) That the Government of Iraq agree to the stationing of United Nations human rights monitors throughout the country;

(o) That, irrespective of the Government of Iraq's position with regard to the stationing of human rights monitors within the country, the General Assembly approve the allocation of sufficient human and material resources for the sending of human rights monitors to such locations as would facilitate improved information flow and assessment and would help in the independent verification of reports on the situation of human rights in Iraq.

Appendix

SELECTED RECENT DECREES OF THE REVOLUTION COMMAND COUNCIL

[Original: Arabic]

Document No. 1

Decree No. 59

Date of Decree: 24 Dhul-Hijjah A.H. 1414/4 June 1994

Pursuant to the provisions of article 42, paragraph 1, of the Constitution, the Revolution Command Council has decreed as follows:

1. A penalty of amputation of the right hand from the wrist shall be imposed on anyone who commits any of the offences of theft specified in articles 440, 441, 442, 443, 444 and 445 of the Penal Code (Act No. 111 of 1969) and article 117 of the Military Penal Code (Act No. 13 of 1940) and anyone who commits the offence of stealing a vehicle. The left foot shall be amputated from the ankle in the event of a repeated offence.

2. The penalty shall be death instead of amputation if the theft is committed by a person carrying a visible or concealed weapon or if the offence leads to the death of a person.

3. The penalty of amputation shall not apply to crimes of theft in the following circumstances:

(a) If the value of the stolen article does not exceed 5,000 dinars;

(b) If the theft is committed between spouses or relatives to the second degree;

(c) If the perpetrator of the offence is a juvenile.

4. If the court believes that the circumstances of the offender or the offence referred to in paragraphs (a) and (b) of paragraph 3 of this Decree merit clemency in the light of the legally mitigating circumstances, it may impose a penalty of life imprisonment instead of death.

5. This Decree shall enter into force from the date of its publication in the Official Gazette until further notice.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 2

Decree No. 92

Date of Decree: 12 Safar A.H. 1415/21 July 1994

Pursuant to the provisions of article 42, paragraph 1, of the Constitution, the Revolution Command Council has decreed as follows:

1. A penalty of life imprisonment or amputation of the right hand from the wrist shall be imposed on anyone who falsifies an official document if such falsification leads to the achievement of an illicit benefit for him or deprives another person of the enjoyment of his rights.

2. This Decree shall enter into force from the date of its publication in the Official Gazette and shall apply to offences committed after its entry into force and until further notice.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 3

Decree No. 93

Date of Decree: 14 Safar A.H. 1415/23 July 1994

Pursuant to the provisions of article 42, paragraph 1, of the Constitution, the Revolution Command Council has decreed as follows:

1. Deserters from, and evaders of, military service are prohibited from:

(a) Concluding contracts concerning the use of agricultural land or land allocated for industrial purposes;

(b) Taking part in public auctions for the purchase of State-owned property or in any way leasing such property or concluding contracts concerning the use thereof;

(c) Engaging in commerce;

(d) Making use of land or housing owned by the State or the Socialist sector, with the exception of housing occupied or ready for occupation prior to the entry into force of this Decree.

2. Contracts concluded by the persons covered by the provisions of section I of this Decree shall be cancelled.

3. This Decree shall enter into force on the date of its publication in the Official Gazette.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 4

Decree No. 116

Date of Decree: 18 Rabi' I A.H. 1415/25 August 1994

Pursuant to the provisions of article 42, paragraph 1, of the Constitution, the Revolution Command Council has decreed as follows:

1. The following paragraph shall be added to section 1 of Revolution Command Council Decree No. 93 of 23 July 1994, of which it shall constitute subparagraph (e):

"(e) Acquisition, in any way, of ownership of real estate."

2. This Decree shall enter into force on the date of its promulgation.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 5

Decree No. 109

Date of Decree: 11 Rabi' I A.H. 1415/18 August 1994

Pursuant to the provisions of article 42, paragraph 1, of the Constitution, the Revolution Command Council has decreed as follows:

1. Every person legally punished by amputation of the hand for a crime punishable by amputation of the hand shall be tattooed with a cross between the eyebrows. Each intersecting line of the cross shall be 1 centimetre in length and 1 millimetre thick.

2. The tattoo shall be carried out in the same public hospital in which the amputation was performed.

3. The public hospital shall prepare the technical and medical requirements to facilitate the performance of the tattooing procedure.

4. This Decree shall enter into force from the date of its publication in the Official Gazette until further notice, and shall apply retroactively to every person who has already been punished by amputation of the hand.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 6

Decree No. 115

Date of Decree: 18 Rabi' I A.H. 1415/25 August 1994

Pursuant to the provisions of article 42, paragraph 1, of the Constitution, the Revolution Command Council has decreed as follows:

1. The auricle of one ear shall be cut off any person committing the following crimes:

(a) Evading to perform military service;

(b) Deserting from military service;

(c) Sheltering or protecting anyone who has evaded or deserted from military service.

2. The auricle of the other ear shall be cut off in the case of a second offence involving any of the crimes specified in paragraph 1 of this Decree.

3. A horizontal line 1 millimetre thick and no less than 3 centimetres and no more than 5 centimetres long shall be tattooed on the forehead of every person whose ear has been cut off.

4. The cutting off of the auricle of the ear, and the tattooing, shall be performed in accordance with the directives to be issued by the Office of the President in this respect.

5. Death by firing squad shall be the penalty for anyone who:

(a) Has deserted from military service three times;

(b) Has evaded military service and subsequently deserted twice;

(c) Has three times protected or sheltered any deserter from or evader of military service.

6. For the purposes of the application of the provisions of this Decree, a deserter shall be considered to be any person who has been absent from his unit without authorized leave for more than 15 days.

7. (a) These legal processes shall not apply to any evader of or deserter from military service who surrenders within seven days of the date of the promulgation of this Decree to authorities to be specified by the Office of the President.

(b) The period specified in paragraph (a) of this article shall be 30 days for anyone outside Iraq.

8. The provisions of this Decree shall apply to those who evaded or deserted from military service prior to the promulgation of this Decree, should they fail to surrender themselves within the period specified in article 7 of this Decree.

9. The authorities competent to implement the provisions of this Decree shall be specified by the Office of the President.

10. (a) This Decree shall enter into force from the date of its promulgation until further notice.

(b) Any text which conflicts with the provisions of this Decree shall be null and void.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 7

Decree No. 117

Date of Decree: 18 Rabi' I A.H. 1415/25 August 1994

Pursuant to the provisions of article 42, paragraph 1, of the Constitution, the Revolution Command Council has decreed as follows:

1. (a) It is prohibited to remove the tattoo placed as a result of the commission of a crime punishable by amputation of the hand or the ear.

(b) Anyone who removes, or helps to remove, the tattoo or carries out cosmetic surgery of the amputated hand or ear shall be punished by amputation of the hand or the ear, together with a tattoo, as appropriate.

2. The penalty imposed on anyone punished by amputation of the hand or the ear and the tattoo shall be entered in the civil status identity card, the certificate of nationality, the military service record book and other official documents establishing identity.

3. The civil and penal consequences of the penalty of amputation of the hand or the ear and the tattoo shall be annulled if the person so punished performs a patriotic or heroic act to which a witness can testify.

4. This Decree shall enter into force from the date of its promulgation until further notice.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 8

Decree No. 145

Date of Decree: 29 Rabi' I A.H. 1415/5 September 1994

Pursuant to the provisions of article 42, paragraph 1, of the Constitution, the Revolution Command Council has decreed as follows:

1. Anyone liable to compulsory military service shall be exempted therefrom upon completion of the 90 day basic training period and payment of a cash alternative of 0.5 million dinars.

2. Anyone liable to reserve military service shall be exempted therefrom upon payment of a cash alternative of 1 million dinars.

3. The provisions of article 1 and article 2 above shall apply to those already performing military service and those who shall perform it subsequent to the promulgation of this Decree.

4. The Minister of Defence shall issue the directives which will facilitate the implementation of the provisions of this Decree.

5. This Decree shall enter into force from the date of its promulgation and shall remain in force until further notice.

Saddam HUSSEIN
Chairman of the Revolution Command Council